

**UNITED STATES DISTRICT COURT
DISTRICT OF NEW JERSEY**

FANCASTER, INC.,	:	
	:	
Plaintiff,	:	Civ. No. 08-2922(DRD)
	:	
v.	:	<u>ORDER</u>
	:	
COMCAST CORPORATION, COMCAST	:	
INTERACTIVE MEDIA, LLC and	:	
COMCAST MANAGEMENT, LLC,	:	
	:	
Defendants/Counterclaimants	:	
Third-Party Plaintiffs	:	
	:	
v.	:	
	:	
FANCASTER, INC. sometimes d/b/a	:	
“TARGET WIRELESS”,	:	
	:	
Counterclaim-Defendant,	:	
	:	
and	:	
	:	
CRAIG KUEGER,	:	
	:	
Third-Party Defendant.	:	
	:	

This matter having come before the Court on Defendants’ Comcast Corporation, Comcast Interactive Media, LLC, and Comcast Management, LLC (collectively referred to as “Comcast”) (1) Motion for Summary Judgment on all of Plaintiff Fancaster, Inc.’s (“Fancaster”) claims, pursuant to Federal Rule of Civil Procedure 56(a), and (2) Motion in Limine to exclude the reports and testimony of Weston Anson, pursuant to Federal Rule of Evidence 702, 703, and 403; Fancaster’s and Third-Party Defendant Craig Krueger’s (1) Motion for Summary Judgment

on Comcast's counterclaims and third-party claims, pursuant to Federal Rule of Civil Procedure 56(a), (2) Motion in Limine to exclude the reports and testimony of Gary Krugman and Greg Lastowka, pursuant to Federal Rule of Evidence 702, 703, and 403, (3) Motion in Limine to exclude the surveys and testimony of Hal Poret, pursuant to Federal Rule of Evidence 702, 703, and 403, and (4) Motion to Strike Comcast's affirmative defenses of fraud, unclean hands, laches, and acquiescence, pursuant to Federal Rule of Civil Procedure 12(f); and the Court having considered the submissions and oral arguments of the parties; and for the reasons set forth in the Opinion of even date;

IT IS on this 22nd day of December, 2011, ORDERED that:

- (1) Comcast's Motion for Summary Judgment is GRANTED with respect to Fancaster's claims for Federal Trademark Infringement, Corrective Advertising, Federal False Designation of Origin/Unfair Competition, Federal Trade name Infringement, Misappropriation of Trademark & Tradename, Unfair Competition and Deceptive Trade Practices, Trade Name Infringement, and Unjust Enrichment, and DENIED with respect to Fancaster's claim for Cyber Piracy. Counts One, Two, Three, Five, Six, Seven, and Eight of Fancaster's Amended and Supplemental Complaints are dismissed with prejudice.
- (2) Fancaster's and Mr. Krueger's Motion for Summary Judgment is GRANTED with respect to Comcast's claims for Fraud on the PTO and Declaratory Judgment of Non-Use, and DENIED with respect to Comcast's claim for Cyber Piracy. Counts One and Two of Comcast's First Amended and Supplemental Counterclaim against Fancaster, Inc. and First Amended and Supplemental Third Party Complaint against Craig Krueger are dismissed with prejudice.

- (3) Fancaster's Motion in Limine to Exclude the Surveys and Testimony of Hal Poret is GRANTED with respect to the March 2009 survey and testimony related thereto, and DENIED with respect to the March 2011 Survey and testimony related thereto.
- (4) Fancaster's Motion in Limine to Exclude the Testimony of Gary Krugman and Greg Lastowka is GRANTED, except that Mr. Krugman may testify about the subject matter of Paragraphs 1-17 and 20-26 of his November 18, 2009 Report and Mr. Lastowka may testify about the subject matter of Paragraphs 1-4, 6-8, 11-14 and 17 of his Report.
- (5) Fancaster's Motion to Strike Comcast's affirmative defenses of fraud, unclean hands, laches, and acquiescence is GRANTED. Those defenses are STRICKEN.

/s/ Dickinson R. Debevoise
DICKINSON R. DEBEVOISE, U.S.S.D.J.